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September 30, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Communication
***Connect America Fund*, WC Docket No. 10-90**
***A National Broadband Plan for Our Future*, GN Docket No. 09-51**
***High-Cost Universal Service Support*, WC Docket No. 05-337**
***Developing Unified Intercarrier Compensation Regime*, CC Docket No. 01-92**
***Federal-State Joint Board on Universal Service*, CC Docket No. 96-45**
***Special Access for Price Cap Local Exchange Carriers*, WC Docket No. 05-25**

Dear Ms. Dortch:

We submit this notice in compliance with Section 1.1206(b) of the Commission's rules.

On Thursday September 29th, Free Press policy director Matt Wood, political adviser Joel Kelsey and research director S. Derek Turner met with Angela Kronenberg, wireline legal advisor to Commissioner Clyburn. Mr. Wood and Mr. Kelsey were present in person and Mr. Turner joined via telephone. The purpose of our meeting was to discuss Free Press' August 24th comments in response to the Commission's *Further Inquiry* in the above dockets.

During the meeting, we reiterated our concerns about the ABC and RLEC plans (together, the "joint-industry framework") offered by six major price cap carriers and certain rural carrier associations, the implementation of which would lead inevitably to unjustified rate hikes for all consumers in exchange for as-yet unproven broadband deployment gains. As we expressed our thanks for Commissioner Clyburn's leadership on issues affecting the affordability of communications services, citing her previous efforts to call out companies for implementing unjustified rate hikes during an economic downturn, we asked that the Commissioner hold her own agency to the very same standard.

We emphasized the following points regarding the joint-industry framework:

- As a whole, the ABC/RLEC plan that the Commission appears to be using as a framework is an unprecedented industry giveaway. The Commission simply cannot approve anything that resembles this industry-authored plan.
- We noted that the FCC is rightly concerned with the low levels of broadband adoption by low-income earners, seniors and other non-adopting segments of the American population.

In that context, we noted that signing off on rate hikes for these very same Americans, who have been hit hardest by economic downturn, would directly undermine any efforts to increase their level of broadband adoption. Forcing all consumers to pay more in order to hand regulatory relief to monopolies is inconsistent with Section 254, and indeed, with the Communications Act as a whole. In addition, it is cruel medicine for those hit hardest by the recent economic downturn, and is completely unjustified from a public policy perspective.

- We strongly emphasized our opposition to any increases in the Subscriber Line Charge (SLC).
    - We noted first that the SLC is a Commission-authorized charge for regulated incumbent local exchange carriers to recover the interstate portion of the cost of the local loop. All available data indicates that the current $6.50 monthly SLC is already leading to an over-recovery of costs for most loops. The Commission can look at its own TELRIC data to see this, or preferably, update separations and the HCPM to get a true sense of the actual over-recovery of the current SLC before even contemplating any increases.
    - Further, the joint-industry framework contemplates using increases in the SLC as a mechanism to offset what are primarily reductions in intrastate access revenues. This is improper as a matter of jurisdictional separations.
    - We also noted the legal and economic problem with the Commission's apparent current philosophy that *all* costs must be recovered either through end-user charges or USF payments. The Communications Act is built upon the calling-party-pays principle, and Congress never intended for consumers or USF to bear more than their fair share of the joint and common costs of local telecommunications infrastructure. By moving to a uniform, near zero rate, and doing so fully on the backs of consumers, the Commission will run afoul of Section 254(k). That provision prohibits telecommunications carriers from using "services that are not competitive to subsidize services that are subject to competition," and it requires the Commission "to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."
    - We noted that if the ABC plan's ICC reforms were adopted, it would unjustly enrich and reward Verizon and AT&T –vertically integrated IXC and wireless carriers that would reap billions in *net* savings as a result of FCC-mandated lower access payments while also reaping billions more in higher SLC charges from vulnerable consumers. The Commission has simply failed to make the case as to why uniform ICC "reform" that requires below-cost rates in some instances is beneficial to consumers or the American economy as a whole, nor why it would in any way facilitate greater broadband deployment. To give this massive gift to the most politically connected carriers while claiming it is needed to benefit consumers would make no sense.
    - We pointed out that if the Commission adopted the ABC plan, it would be putting the cart before the horse, because the failure to adequately address judicial separations means the Commission has no idea of the appropriate level of costs that

need to be recovered. We noted that in the years since separations were last addressed, carriers shifting of revenues and costs between unregulated and regulated services, as well as state and federal jurisdictions, have created a situation where costs are already being over-recovered.

- We also pointed out how the failure of the ABC plan to account for revenues from non-telecommunications services before adjusting ICC payments would continue the unjust enrichment of certain LECs on the backs of consumers. We noted that when consumers are subsidy recipients, they are means tested in the Lifeline program; and it certainly seems reasonable to means test LECs, the subsidy recipients in the High Cost Fund.

- We expressed our shared concern for the plight of rural Americans that remain without broadband, but strongly questioned whether the USF reform contemplated in the join-industry framework would actually deliver benefits to these rural Americans in a cost-effective manner, as was recommended in the National Broadband Plan.
  - We noted that the Commission rarely retools the USF, and that the ABC/RLEC plan perpetuates the very same problems that lead to the current calls for reforming USF. The rural deployment problem is real, but is confined to a small portion of the 18 percent of Americans that live in rural areas. We noted that by the end of 2013, 98 percent of Americans would have access to at least 2 providers of 4G wireless services. We also noted that the updated national broadband map data indicates that 99 percent of Americans have access to basic broadband, and 97 percent have access to broadband with speeds above 3 Mbps in the downstream direction. In other words, more than four-fifths of that rural population is already served and/or will be served by broadband services that deliver speeds *greater* than those services that will be subsidized by the CAF, and sooner than the CAF will be implemented.
  - To be sure, these data indicate a broadband gap, but one that can be addressed through targeted public policies that do not increase costs to all telecommunications consumers. The Commission cannot avoid its obligation to preserve universal service for all Americans, and fiscal responsibility has to be its top concern, not formulating public policy that meets with the approval of the LECs that it regulates and subsidizes.

- We expressed concern with the creation of yet another "temporary" access recovery fund, noting how the IAS fund was also supposed to be temporary and was supposed to expire in 2005. The National Broadband Plan and the NPRM in this proceeding described IAS as unnecessary, yet that fund has distributed nearly $4 billion in ratepayer dollars to price cap LECs after it was due to expire. We noted how such funds were completely unnecessary, even for "off the books" broadband deployment, with many of the mid-size price cap LECs showing EBITDA margins near 50%, while also having a poor track record on broadband deployment. Even if *some* of these unnecessary subsidies might have in fact gone to broadband deployment, it is the job of the Commission to ask exactly how much is needed to ensure quality services at reasonable rates, and then to ensure that *all* of any given subsidy goes to those services, not to pad profits or pay for excessive corporate overhead costs.

- We expressed concern with the ABC plan's use for determining support of a cost model that does not consider all revenues earned (or potentially earned) by supported providers from services offered over the supported infrastructure. One of the problems with the current USF, as detailed by the National Broadband Plan, is the failure to consider all such revenues when determining support.
- We expressed concern with the CQBAT model itself, specifically the model's consideration of large businesses alongside residential premises when calculating the award for a given Census Block. We highlighted how the model considers wireless towers to be large businesses, and noted how the ABC plan would result in the completely unnecessary subsidization of the wireless towers of carriers who have already deployed, or are planning to deploy, adequate backhaul facilities at these towers without any USF support.
- We expressed our concern with the ABC plan's use of a right of first refusal, particularly one based on the wire center geography. We noted that the arguments in favor of a right of first refusal were contradictory to the ABC plan's and the National Broadband Plan's emphasis on reducing costs through competitive bidding.
- We emphasized concern about the reverse auction process itself, noting that it is structured in a manner that will lead to subsidies being directed to the areas that are most likely to otherwise see deployment without subsidy, as technology costs decline and the broadband market matures. We also expressed concern about the lowest-common-denominator approach of the reverse auction process, noting that the focus on a per-household capex subsidy need alone would rule out providers who may be able to offer services that fulfill other important goals, such as higher quality services and lower monthly prices.
- We noted that the National Broadband Plan rightly identified that poor FCC oversight of the special access and enterprise market was hampering broadband deployment. We urged the Commission to fix special access before lavishing further regulatory largesse on the very same companies that are abusing their special access monopolies and thereby harming rural broadband deployment and adoption.
- The CAF will by definition grant a monopoly to support recipients, but will not have any constraints on what those monopolists can charge. We expressed concern with this aspect of ABC plan, as well as the plan's outrageous demands that all ETC, COLR and other regulation of price cap carriers be eliminated.
- We emphasized the considerable legal uncertainty surrounding the ABC plan, and expressed our concern that at the end of the legal process, the only "reform" left standing would be the higher Subscriber Line Charges for telephone consumers.
- We stressed our belief that the best way to meet America's broadband goals is to increase broadband adoption, and that focusing on fiscal reforms to the High Cost Fund in order to reduce the size of the program and return money to ratepayers is a prudent way to help boost adoption. To that end, given the total lack of justification for tying ICC changes to USF reform, we strongly urged the Commission to abandon this "global" effort and focus on USF reform while conducting the necessary data collection and further study of the ICC issues.

- We noted how Chairman Martin released the text of his final, actual proposed USF and ICC rule changes prior to scheduling (and then abandoning) a vote on the item. We understand that the Commission wishes to retain some flexibility prior to adopting a final order, but noted in this case, none of the notices in this proceeding contained any proposed rule changes, only questions. The Commission has the duty to reveal its preferred policy direction prior to voting on an item, even if the item is modified somewhat prior to a vote.

Sincerely,

_____/s/_____

S. Derek Turner
Research Director
Free Press

cc: Angie Kronenberg